

The Honorable Thomas S. Zilly

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASEY ROBINSON,

Plaintiff,

v.

MARLES, INC., a Washington Corporation  
d/b/a BURGERMASTER,

Defendant.

No. 13-01058 TSZ

DEFENDANT'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
COMPLAINT

Defendant Marles, Inc., dba Burgermaster (hereinafter "Defendant"), by and through its attorneys of record, hereby answers and responds to the Complaint as follows.

**JURISDICTION, VENUE, AND PARTIES**

1.1 Answering paragraph 1.1 of the Complaint, Defendant admits that this court has jurisdiction to hear this case. Defendant denies the remaining allegations of this paragraph.

1.2 Answering paragraph 1.2 of the Complaint, Defendant is without sufficient information to form a belief as to the truth of the allegation in this paragraph and therefore denies the same.

1.3 Answering paragraph 1.3 of the Complaint, Defendant admits that Marles, Inc. is an employer licensed to do business in King County in the State of Washington, does business within the territorial jurisdiction of this court, and has a place of business at the location where it

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COMPLAINT - 1  
(Case No. 13-01058 TSZ)

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1 employed Plaintiff in Seattle, Washington. Defendant also admits that it operates three  
2 Burgermaster restaurants in Washington. Defendant denies the remaining allegations of this  
3 paragraph.

4 1.4 Answering paragraph 1.4 of the Complaint, Defendant admits that Marles, Inc. is  
5 in the business of providing goods and services. Defendant also admits that it employed more  
6 than 50 employees during at least 20 weeks in 2011 and 2012 in Washington where it employed  
7 Plaintiff. Defendant is without sufficient information to form a belief as to the truth of the  
8 remaining allegations in this paragraph and therefore denies the same.

9 1.5 Answering paragraph 1.5 of the Complaint, Defendant is without sufficient  
10 information to form a belief as to the truth of the allegations in this paragraph and therefore denies  
11 the same.

12 1.6 Answering paragraph 1.6 of the Complaint, Defendant admits that Marles, Inc.  
13 hired Plaintiff in September 2008, and that the last day that Plaintiff performed work for Marles,  
14 Inc. was in March 2012. Defendant also admits that Plaintiff was employed for more than 12  
15 months prior to the last day of his employment with Marles, Inc. Defendant is without sufficient  
16 information to form a belief as to the truth of the remaining allegations in this paragraph and  
17 therefore denies the same.

18 **FACTS REGARDING PLAINTIFF'S FMLA CLAIMS**

19 2.1 Answering paragraph 2.1 of the Complaint, Defendant repeats and incorporates its  
20 responses to paragraphs 1.1 through 1.6 above as if set forth fully herein.

21 2.2 Answering paragraph 2.2 of the Complaint, Defendant admits that Plaintiff was  
22 employed by Defendant as a cook and other positions at its Burgermaster restaurant located in  
23 University Village, Seattle, Washington from September 2008, and that the last day that Plaintiff  
24 performed work for Defendant was in March 2012. Defendant denies the remaining allegations  
25 of this paragraph.

26 2.3 Answering paragraph 2.3 of the Complaint, Defendant admits that Plaintiff was  
27 injured in an automobile accident in March 2012. Defendant is without sufficient information to

1 form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the  
2 same.

3 2.4 Answering paragraph 2.4 of the Complaint, Defendant is without sufficient  
4 information to form a belief as to the truth of the allegations in this paragraph and therefore denies  
5 the same.

6 2.5 Answering paragraph 2.5 of the Complaint, Defendant admits that it requested  
7 that Plaintiff provide medical documentation regarding the injuries that he sustained in the motor  
8 vehicle accident as it pertained to his absence from work. Defendant is without sufficient  
9 information to form a belief as to the truth of the remaining allegations in this paragraph and  
10 therefore denies the same.

11 2.6 Answering paragraph 2.6 of the Complaint, Defendant is without sufficient  
12 information to form a belief as to the truth of the allegations in this paragraph and therefore denies  
13 the same.

14 2.7 Answering paragraph 2.7 of the Complaint, Defendant admits that Plaintiff was  
15 informed that his employment was terminated. Defendant is without sufficient information to  
16 form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the  
17 same.

18 **FIRST CAUSE OF ACTION – VIOLATION OF FMLA**

19 3.1 Answering paragraph 3.1 of the Complaint, Defendant repeats and incorporates its  
20 responses to paragraphs 1.1 through 2.7 above as if set forth fully herein.

21 3.2 Answering paragraph 3.2 of the Complaint, Defendant denies the same.

22 3.3 Answering paragraph 3.3 of the Complaint, Defendant denies the same.

23 3.4 Answering paragraph 3.4 of the Complaint, Defendant denies the same.

24 **RELIEF REQUESTED**

25 A. Answering paragraph A, Defendant denies that Plaintiff is entitled to any of the  
26 damages and/or relief requested from Defendant, including the relief requested in this paragraph.  
27

1 B. Answering paragraph B, this paragraph is blank in the Complaint and therefore  
2 requires no response.

3 C. Answering paragraph C, Defendant denies that Plaintiff is entitled to any of the  
4 damages and/or relief requested from Defendant, including the relief requested in this paragraph.

5 D. Answering paragraph D, Defendant denies that Plaintiff is entitled to any of the  
6 damages and/or relief requested from Defendant, including the relief requested in this paragraph.

7 **AFFIRMATIVE DEFENSES**

8 By way of further answer to the Complaint, and without waiving any allegations previously  
9 denied, Defendant asserts the following affirmative defenses:

10 1. The Complaint fails to state a claim upon which relief can be granted.

11 2. The Complaint fails to allege sufficient facts or claims to support the recovery of  
12 the damages and relief sought in the Complaint.

13 3. Pending further discovery, some or all of Plaintiff's claims are barred in whole or  
14 in part by Plaintiff's failure to exhaust his internal and/or administrative remedies.

15 4. Pending further discovery, some or all of Plaintiff's claims are barred in whole or  
16 in part by the applicable Statutes of Limitations.

17 5. Plaintiff's injuries and damages, if any, were caused or contributed to by  
18 Plaintiff's own acts, omissions, breaches of contract, and/or misconduct.

19 6. Plaintiff's injuries and damages, if any, were caused or contributed to by the acts,  
20 omissions, breaches of contract or legal duties, and/or misconduct of third parties over whom  
21 Defendant had no control.

22 7. Plaintiff's claims are barred in whole or in part because Plaintiff has failed to  
23 mitigate his damages, if any.

24 8. Plaintiff's employment was at-will, and any changes in Plaintiff's employment  
25 status were for legitimate and lawful reasons.

26 9. Plaintiff's claims and damages are barred in whole or in part because Defendant  
27 acted in good faith and with proper justification at all relevant times.

10. Plaintiff's claims are barred in whole or in part by assumption of risk, contributory/comparative negligence, waiver, consent, estoppel, laches, and/or unclean hands.

11. Any recovery by Plaintiff is barred in whole or in part on the basis of the doctrine of after-acquired evidence.

12. Some or all of the claims asserted in the Complaint are frivolous and without merit such that Defendant should be awarded its costs and attorneys' fees.

13. All actions taken by Defendant with respect to Plaintiff were justified by business necessity.

14. Some or all of the claims in the Complaint are barred by the exclusivity of remedies of the worker's compensation system.

15. Pending further discovery, Plaintiff's claims may be subject to the defenses set forth in Civil Rule 12(b).

16. Defendant reserves its right to amend this Answer to allege additional affirmative defenses and pursue other relief as may be warranted by discovery.

**DEFENDANT'S PRAYER FOR RELIEF**

WHEREFORE, having fully answered the allegations contained in the Complaint, and having asserted its affirmative defenses, Defendant prays that:

1. The Court dismiss all claims asserted by Plaintiff against Defendant with prejudice;
2. The Court award to Defendant the costs, expenses, and attorneys' fees incurred by Defendant to defend against the claims asserted by Plaintiff; and
3. For such other and further relief as this Court may deem just, equitable, and proper.

DATED this 4<sup>th</sup> day of November, 2013.

s/David W. Silke

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Attorneys for Defendant Marles, Inc. d/b/a  
Burgermaster

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, I electronically filed a true and accurate copy of the document to which this declaration is affixed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Peter G. Cogan  
Law Offices of Peter G. Cogan  
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Seattle, WA 98104  
Ph: 206-382-9896  
Fax: 206-682-3002  
Email: coganlaw@yahoo.com

Dated this 4<sup>th</sup> day of November, 2013, at Seattle, Washington.

s/Holly L. White  
Holly L. White, Legal Assistant